

Decision 02-06-065 June 27, 2002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of Application for Approval of the  
Indirect Transfer of Evans Telephone Company  
(U-1008-C) to ABRY Partners, LLC.

Application 02-03-015  
(Filed March 13, 2002)

**O P I N I O N**

**1. Summary**

Evans Telephone Company (Evans or Evans Telephone) and ABRY Partners, LLC (ABRY) seek approval for the acquisition by ABRY of indirect control of Evans under Section 854 of the Public Utilities Code.<sup>1</sup> Evans also seeks Commission approval to effect reorganization at the holding company level to move from organization as corporation to a limited liability company. Specifically, Evans seeks Commission authorization for its parent, Country Road Communications, Inc. (Country Road),<sup>2</sup> to become a limited liability company. The application is unopposed. The application is approved subject to conditions that insulate Evans Telephone ratepayers from the debt repayment obligations of

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<sup>1</sup> All further statutory references are to the Public Utilities Code unless otherwise noted.

<sup>2</sup> In Decision (D.) 01-06-084 (June 28, 2001, the Commission authorized Country Road to acquire control of Evans. Under the corporate structure approved by the Commission, Evans is a wholly owned subsidiary of Evans Telephone Holdings, Inc., which in turn is a wholly owned subsidiary of Country Road. Country Road's application was not protested. No hearing was held.

ABRY, Country Road and Evans Holding Inc. and require Evans Telephone to maintain service that is safe, reliable, and in compliance with applicable statutes and Commission orders. In addition, Applicants must continue to comply with D.01-06-084, that is, to continue to invest approximately \$11 million in total in network infrastructure for Evans Telephone through June 2006 and continue to increase the offering of broadband and other services to Evans Telephone customers without increasing local rates.

## **2. Description of Applicants**

Evans Telephone is an incumbent local exchange telephone utility based in Turlock, California, that provides local exchange telephone service in portions of Merced, Stanislaus, Santa Clara, and Yolo Counties, serving approximately 12,000 access lines. Country Road and Evans Holdings are Delaware corporations based in Morristown, New Jersey. Country Road owns and operates two local exchange telephone companies, located in Maine and West Virginia, with approximately 8,500 access lines. Evans Holdings is a subsidiary of Country Road. CRC Communications of California (CRC) is a subsidiary of Country Road authorized to operate in California as a competitive local carrier (CLC).<sup>3</sup>

ABRY is a private investment firm with over \$2 billion of capital under management. ABRY's investment in Country Road will occur through two affiliated investment funds: 1) substantially all of the investment will be through ABRY Partners IV, L.P., a Delaware limited partnership, and 2) a nominal

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<sup>3</sup> CRC was granted operating authority in D.01-02-034 issued February 8, 2001, and may provide service within the service territories of Pacific Bell Telephone Company, Verizon California, Inc., and Citizens Telecommunications Company of California.

amount of the investment through ABRY Investment Partnership, L.P., also a Delaware limited partnership. Although the percentage ownership of shares of Country Road that ABRY will acquire is uncertain due to certain contingencies, it is possible that, as a result of its investment, ABRY would control in excess of 50% of the outstanding shares of Country Road. In addition, Applicants state that under the definitive document to be entered into in connection with ABRY's investment, ABRY will have the right to designate directors with a majority of the votes on a newly reconstituted Country Road board of directors, regardless of the percentage of shares ABRY ultimately acquires. On this basis, ABRY will have an ownership-sense "control" of Country Road, leading to the indirect transfer of control of Evans. However, there are no anticipated changes to the management or operation of Evans contemplated in connection with ABRY's investment in Country Road. Applicants note that the change in control will be transparent to Evans Telephone customers, who will not experience any change in rates attributable to ABRY's investment in Country Road. ABRY's principal offices are located in Boston, Massachusetts.

### **3. Nature of Application**

Country Road seeks additional equity investment to fund its operations, offset its debt, and allow it to pursue additional opportunities related to the acquisition of rural local exchange carriers. ABRY's business is to invest in well-run companies to earn a return for its investors. ABRY states that its investment in Country Road furthers the goals of both companies. Applicants state that ABRY is a private investment firm, formed in 1989, with over \$2 Billion of capital under management dedicated to the media and communications sectors. It currently manages capital on behalf of more than 100 limited partners, including Fortune 100 pension funds, university endowments, charitable trusts,

leading insurance companies, major commercial banks and high net worth companies. As noted above, Applicants contend that the acquisition involves only the sale of stock, and there will be no effect on the assets, liabilities, operations, financial statements, or regulatory status of Evans Telephone. According to the application and to the declaration of ABRY's President, ABRY intends to retain the current management personnel and structure of Evans Telephone and will continue to conduct its operations from Turlock, California. Furthermore, Applicants state their intention to continue to provide high quality telecommunications services to the customers of Evans Telephone. No party protested or responded to the application.

#### **4. Background**

On March 9, 2001, in Application (A.) 00-09-045, the application to sell Evans to Country Road, the assigned Administrative Law Judge (ALJ) mailed a draft decision that denied the application because it found that the acquisition and subsequent transfer of control of Evans Telephone to Evans Holdings and Country Road would be adverse to the public interest. The draft order noted the Commission's concern with Country Road's negative net income, its high proportion of long-term debt relative to equity, and its high percentage of intangible assets.<sup>4</sup> Given the additional \$42 million in long-term debt needed to finance the proposed transaction, the order found that the financial condition of Country Road could pose a threat to the captive ratepayers of Evans Telephone

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<sup>4</sup> Country Road's balance sheet, dated June 30, 2000, indicates total assets of \$39.7 million (of which \$30.3 million are listed as "Intangibles"), long-term debt of \$22.5 million, and equity of \$14.7 million. (See Second Amendment to A.00-09-045, filed December 27, 2000.) Country Road's income statement for the same period shows a net loss of \$3.3 million.

because the company might be forced to sell assets or seek a rate increase to pay debt obligations from the acquisition. Hence, the draft order found that the proposed transaction would be adverse to the public interest because Evans Telephone's financial condition would not be maintained or improved by the transaction. In denying the application, the draft decision noted that the denial was without prejudice to any future filing by Applicants attempting to show that the ratepayers of Evans Telephone would not be affected in the event of financial difficulties for Country Road.

On March 27, 2001, the Applicants filed a petition asking the Commission to set aside submission of that proceeding and receive additional evidence demonstrating that the public interest would be served if Country Road assumed control of Evans Telephone. In a ruling shortly thereafter, the assigned ALJ allowed Applicants to supplement the record of that case, rather than filing an entirely new application, in an attempt to meet their burden of proof that the proposed transaction is in the public interest. The ruling required Applicants to respond to a series of questions on the financing of the transaction and the effect of the transaction on Evans Telephone's finances and ratepayers. The initial draft decision denying the application was withdrawn from the Commission's agenda.

With the additional information provided by Applicants, we were reasonably assured that the transfer of control of Evans Telephone to Country Road and Evans Holdings was in the public interest as long as certain conditions were maintained. Specifically, we found that the transaction is in the public interest as long as Evans Telephone ratepayers are insulated from the debt repayment obligations of Country Road and Evans Holdings, and insulated from the success or failure of Country Road's CLC operations. The transaction would be also in the public interest as long as Evans Telephone follows through with its \$11 million commitment to infrastructure investment and new service offerings,

while maintaining service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders. Therefore, to ensure that the transfer of control of Evans Telephone to Country Road would be in the public interest, we approved the transaction as set forth in Appendix A of D.01-06-084.

## **5. Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . .” The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.) The Commission has held that the relevant inquiry is whether the proposed transaction is in the public interest.

We now address this application, A.02-03-015, of ABRY and Evans Telephone for the approval of indirect transfer of control from Evans Telephone’s parent, Country Road to ABRY. After one year of ownership, Country Road is before us seeking approval of indirect transfer in order to obtain additional equity investment to fund its operations, offset its debt and to allow it to pursue additional opportunities related to the acquisition of rural local telephone exchange carriers.

In order to evaluate this request for change in control, we must determine, among other things, what has occurred since we approved the sale of Evans Telephone to County Road. Has Country Road followed through with its investment plans for Evans Telephone to invest approximately \$11 million in network infrastructure over the next five years? Has the company complied with the balance of our order in D.01-06-083?

In the assigned ALJ's ruling on May 9, 2002, we asked Evans to provide us with a history of its investment in network infrastructure and its plan to spend the \$11 million in network infrastructure improvement we ordered in D.01-06-084. We also asked Evans what is the increase in the offering of broadband and other services to Evans' customers, over current levels. Evans responded on May 13, 2002, with a supplemental filing. In that filing Evans stated that, since June 28, 2001, the date of D.01-06-084, its network infrastructure new investment as of March 31, 2002 is \$3.3 million and its projected expenditures for the year 2002 and 2003 are \$5.2 million and \$4.5 million, respectively. In addition, Evans stated that it introduced Digital Subscriber Line (DSL) Service, a form of broadband, in its Patterson Exchange in late 2000. In September 2001, Evans introduced DSL service into its Livingston Exchange as a competitive alternative to cable modem service. Evans claims that from June 28, 2001 to May 10, 2002, DSL subscribership has grown from 76 customers to 213. Evans estimates that 54% of its subscriber lines are DSL qualified. In addition, Evans has deployed a fiber network to provide broadband services in the Livingston area, including the Livingston School District.

We note that our review of the 2001 Annual Report, the Form M, to this Commission, that Evans Telephone spent approximately \$3.3 million, most of which was for digital switching and circuit equipment. We examined our Consumer Affairs Branch's files for service complaints; there were none. It appears that County Road is following through with its stated goal of investing \$11 million over the next five years and is continuing to provide good telephone service.

This brings us to whether or not this application is in the public interest. Applicants state through the declaration<sup>5</sup> of Royce Yudkoff, Managing Partner of ABRY Partners, LLC, that ABRY does not contemplate a change in the management of Evans Telephone or of Country Road as a result of its investment in Country Road. Country Road, and in turn Evans Telephone, will benefit from ABRY's investment not only through an infusion of capital, but also through ABRY's in-depth industry knowledge, extensive relationships, flexible financing capabilities, and capital market expertise. One of our concerns in A.00-09-045 was the financial health of Country Road. Although we approved Country Road's purchase of Evans Telephone, we were concerned to the degree that we issued two rulings. The responses to those two rulings provided the declaration that Country Road would do a number of things that ultimately allayed our fears and led us to Appendix A of D.01-06-084, in which we set forth our adopted conditions for the sale of Evans to Country Road. The promise of infusion of new capital into Country Road by ABRY gives us greater confidence that Evans Telephone will have the financial wherewithal to continue to provide good telephone service to its 12,000 customers. However, we will still hold Applicants to conditions similar to what we adopted in D.01-06-084, those shown in Appendix A of this decision. These conditions are essentially an updated version of those shown as Appendix A in D.01-06-084.

It appears to us that Evans is following through in compliance with the Commission's decision in D.01-06-084. At its current rate of investment, it should exceed the Commission's mandated network infrastructure investment of \$11 million from the 5-year period beginning mid-year 2001. As noted, Evans

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<sup>5</sup> Exhibit C of A.02-03-015.



also represents that it is increasing the number of broadband customers as well as the availability of DSL service offerings to its customers.

We now address applicant ABRY's financial ability to accomplish this proposed indirect transfer of control. Applicants provided Exhibits E and F under seal, Financial Information for ABRY Partners IV, L.P. and "Term Sheet." We examined these unaudited accounts and find that ABRY's balance sheet and income statement indicate that ABRY appears to have the financial wherewithal to affect this transfer. While ABRY's assets are noteworthy, we wonder how ABRY will actually consummate the indirect transfer of control. In response to another ALJ's ruling on May 29, 2002, Applicants replied that ABRY Partners IV, L.P. have capital commitments from its limited partners for over \$700 million, far in excess of the \$20-30 million required for the investment in Country Road. Applicants state that the new equity provided by ABRY will serve to lower Country Road's costs, in turn furthering Country Road's ability to fulfill investment and broadband commitments made in D.01-06-084.

We note that in one of our conditions for the sale of Evans to Country Road was that Evans Telephone shall not increase rates for its customers due to any increase in costs brought about by its acquisition by Country Road and Evans Holdings. We will hold ABRY to the same condition.

We also note that on December 17, 2001, Evans Telephone filed Advice Letter No. 326 for a general rate increase of \$160,863. We expect that staff will carefully review Evans' request to see that none of the request is related to the sale to Country Road's acquisition last year or due to the proposed indirect transfer of control to ABRY in this application.

## **6. Environmental Review**

Applicants contend this application does not constitute a “project” under the California Environmental Quality Act (CEQA) since Applicants are not requesting authorization related to facilities construction or other activity that would constitute a direct or indirect physical change in the environment.

Under the CEQA, we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Public Resources Code § 21080.) While transfers of utility assets are generally projects subject to CEQA review by the Commission, the facts of this case indicate that this sale, while a project, is not subject to CEQA. Based upon the record, this transaction does not have the potential for causing a significant effect on the environment; and accordingly, the Commission need not perform further CEQA review. (CEQA Guideline 15061(b)(3).)

We note that any approval granted herein under Section 854 for the indirect control of Country Road does not authorize Applicants to construct facilities. In addition, Applicants must follow all applicable environmental regulations should they wish to construct any facilities.

## **7. Categorization**

In Resolution ALJ 176-3084, dated March 21, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in ALJ 176-3084.

## **8. Section 311(g)(2)—Reduced Comment Period**

Pursuant to Pub. Util. Code § 311(g)(2), parties have stipulated to reduce the otherwise applicable 30-day period for public review and comment to seven

days. Applicants filed comments on June 21, 2002, accepting the conditions and urging the Commission to adopt the draft decision.

### **9. Request for Confidentiality**

Applicants request that financial information pertaining to ABRY' income statement and balance sheet, Exhibits E and F filed with this application be kept under seal. Applicants represent that the information is proprietary and sensitive. The information, if revealed, would place Applicants at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

### **Findings of Fact**

1. Notice of this application appeared in the Commission's Daily Calendar of March 19, 2002.
2. No protests have been filed.
3. Applicants seek authorization pursuant to Pub. Util. Code § 854(a) for ABRY Partners, LLC for the indirect control of Evans by its investment in Country Road.
4. Evans Telephone is a local exchange telephone utility owned by Country Road serving approximately 12,000 access lines in portions of Merced, Stanislaus, Santa Clara, and Yolo Counties.
5. ABRY's investment in Country Road will occur through two affiliated investment funds, ABRY Partners IV, L.P. and ABRY Investment Partnership, L.P., both Delaware limited partnerships.
6. ABRY will become the new owner of Evans through the indirect control of Country Road.
7. ABRY's ownership will provide an infusion of capital into the Evans Telephone operations.

8. Evans Telephone's parent, Country Road is a Delaware corporation that owns and operates two small local exchange companies in Maine and West Virginia.

9. Evans Telephone must continue to report all significant transactions with unregulated affiliates according to Section 587 and the rules set forth in D.93-02-019.

10. On December 17, 2001, Evans filed for a general rate increase of \$160,843 by Advice Letter No. 326.

11. Public disclosure of financial information pertaining to ABRY's income statement and balance sheet, included in this application, would place ABRY at an unfair business disadvantage.

### **Conclusions of Law**

1. The proposed indirect transfer of control of Evans Telephone and its parent, Country Road, to ABRY Partners, LLC is in the public interest as long as Evans Telephone ratepayers are insulated from any debt repayment obligations of Country Road and Evans Holdings, and insulated from the success or failure of Country Road's CLC operation, CRC.

2. The transaction will benefit the public interest if Applicants continue to invest approximately \$11 million in network infrastructure through June 2006 and continue to increase the offering of broadband and other services to Evans Telephone customers without increasing local rates.

3. To ensure the proposed transaction is in the public interest, the Commission should approve this application subject to the conditions set forth in Appendix A of this order.

4. The proposed transaction does not have the potential for causing a significant effect upon the environment. Applicants must follow all applicable

environmental regulations and Commission rules for construction of any facilities.

5. Applicants' (ABRY's) request to file their financial information under seal should be granted for two years.

6. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

## **O R D E R**

### **IT IS ORDERED** that:

1. Application (A.) 02-03-015 is approved subject to the conditions set forth in Appendix A of this order.

2. Evans Telephone Company and ABRY Partners, LLC are not granted any authorization by this order to construct facilities and shall follow all applicable environmental regulations and Commission rules should they wish to construct facilities.

3. Applicants' request that the financial information pertaining to ABRY Partners, LLC's income statement and balance sheet, filed with this application be kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

4. If Applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as

the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

5. A.02-03-015 is closed.

This order is effective today.

Dated June 27, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners

**APPENDIX A**  
**ADOPTED CONDITIONS**

The authority granted by this decision is contingent upon the following conditions:

1. Evans Telephone shall not sell any assets used or useful in the provision of its regulated services to satisfy debt obligations incurred by Country Road or Evans Holdings to finance the acquisition of the Evans Telephone or Evans Communications.
2. Evans Telephone shall not increase rates for its customers due to any increase in costs brought about by its acquisition by Country Road and Evans Holdings or by ABRY's indirect control of Country Road.
3. Evans Telephone shall manage its finances on a stand-alone basis, independent of ABRY, Country Road, CRC Communications of California, and other affiliates.
4. ABRY, Country Road and Evans Holdings shall provide Evans Telephone with sufficient equity capital to maintain a reasonable and balanced capital structure and to provide service to the public that is safe, reliable, and in compliance with all applicable statutes and Commission orders.
5. Evans Telephone shall comply with all existing and future affiliate rules and reporting requirements.
6. Evans Telephone shall not pay a dividend, loan money, or provide any other forms of capital to ABRY, Country Road, Evans Holdings, or other affiliates if doing so would jeopardize the utility's ability to provide reliable service at reasonable rates.
7. Country Road shall continue to invest at least \$11 million in network infrastructure for Evans Telephone over through June 2006 and continue to increase the offering of broadband and other services to Evans Telephone customers, over current levels, without increasing local rates.

**(END OF APPENDIX A)**

